

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Canada Postal Corporation—United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-5

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT
FOR BILATERAL AGREEMENT WITH CANADA POST AND
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(December 14, 2011)

The Public Representative hereby provides comments pursuant to Order No. 1011.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of a Type 2 rate adjustment for inbound letter post entered pursuant to an additional Inbound Market Dominant Multi-Service Agreement.² The Notice concerns the inbound portion of a bilateral agreement with the Canada Post Corporation (Canada Post 2012 Agreement), which would set negotiated rates for inbound letter post. Notice at 1.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post

¹ PRC Order No. 1011, Notice and Order Concerning Bilateral Agreement with Canada Post Corporation Negotiated Service Agreement, November 30, 2011.

² Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 23, 2011 (herein "Notice").

2010 Agreement) within the product.³ Subsequently, the Commission determined that bilateral agreements with HongKong Post (HongKong Post Agreement) and China Post Group (China Post 2011 Agreement) should be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.⁴ More recently, the Commission approved the addition of bilateral agreements with Singapore Post Limited and the Australian Postal Corporation to the product.⁵

The Postal Service asserts that the Canada Post 2012 Agreement is functionally equivalent to the above referenced previously approved bilateral agreements included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 8. Consequently, the Postal Service proposes to include the Canada Post 2012 Agreement within the product.⁶ The Postal Service also asserts that the negotiated rates in the Canada Post 2012 Agreement result in “improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items.” *Id.* at 1. The negotiated rates are intended to become effective for the period beginning January 7, 2012, and ending December 31, 2013. *Id.* at 2 – 3, Attachment 2, at 7 (Article 21).

³ See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

⁴ See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011; see also Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2011-7, September 23, 2011.

⁵ See PRC Order No. 995, Order Approving Rate Adjustment for Singapore Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011; see also PRC Order No. 996, Order Concerning Additional Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2012-2, November 23, 2011.

⁶ *Id.* The Postal observes that this year’s renegotiation of the bilateral agreement with Canada Post “presents the first opportunity to include this bilateral with the other agreements” in the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 1.

COMMENTS

The Public Representative has reviewed the Canada Post 2012 Agreement and the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the Canada Post 2012 Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the contract period. In addition, the Public Representative concludes that the Canada Post 2012 Agreement is functionally equivalent to the TNT Post Agreement.

Functional Equivalence. In its Notice, the Postal Service identifies important similarities between the Canada Post 2012 Agreement and the TNT Agreement, which it uses "for purposes of comparison." *Id.* at 9. These include the two-year term of the agreements, contract terms designed to enhance efficiency, accuracy and customer service, and negotiated rates more favorable than the UPU default rates. *Id.* In addition, the Canada Post 2012 Agreement includes performance-based financial incentives. *Id.*

The Postal Service also discusses "differences between the Canada Post agreement and the existing contracts." *Id.* at 9. These include differences in the presentation of the financial model accompanying the Canada Post 2012 Agreement compared to the financial models of other agreements. *Id.* at 10. However, the Postal Service maintains that these presentation differences are "irrelevant to the determination of functional equivalence." *Id.* Similarly, the Postal Service considers differences between the Canada Post 2012 Agreement and other agreements to be "insubstantial" simply because "the text is not derived from the same template agreement." *Id.* Moreover, the Postal Service observes that when considering previous agreements, the Commission has determined that differences of this type do not affect cost or market characteristics "such that the agreements could not be considered to be the same product." *Id.*

The Public Representative agrees. In the case of the Canada Post 2012 Agreement, differences in the presentation of the financial model and the text of the agreement do not affect the basic methodology used in calculating financial results or the basic terms of the agreement that would alter a finding of functional equivalence.

Financial Improvement. Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criterion (1), the negotiated rates for inbound letter post items should result in improvement compared to the UPU terminal dues default rates. Based upon the negotiated rates, the financial model indicates that the Canada Post 2012 Agreement can be expected to improve the financial position of the Postal Service during the term of the agreement. The Canada Post 2012 Agreement should also make some improvement in the operational performance of the Postal Service. Notice at 4. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that they are not implicated by the inbound Canada Post 2012 Agreement. *Id.* at 4-6.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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